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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/711,404	09/16/2004	Alexander Schweizer	LUKP:119US	5403
24041 7590 02/11/2009 SIMPSON & SIMPSON, PLLC 5555 MAIN STREET WILLIAMSVILLE, NY 14221-5406				
EXAMINER				
TRAN, DALENA				
ART UNIT		PAPER NUMBER		
3664				
MAIL DATE		DELIVERY MODE		
02/11/2009		PAPER		

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/711,404

Applicant(s)

SCHWEIZER ET AL.

Examiner

Dalena Tran

Art Unit

3664

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 19 November 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-5 and 21-23 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-5, 21-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-8508)
Paper No(s)/Mail Date _____
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: _____

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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
10711404	9/16/04	SCHWEIZER ET AL.	LUKP:119US

SIMPSON & SIMPSON, PLLC
5555 MAIN STREET
WILLIAMSVILLE, NY 14221-5406

EXAMINER

Dalena Tran

ART UNIT**PAPER**

3664

20090209

DATE MAILED:

Please find below and/or attached an Office communication concerning this application or proceeding.

Commissioner for Patents

DETAILED ACTION

Notice to Applicant(s)

1. This office action is responsive to the amendment filed on 11/19/08. As per request, claims 1-5, and 21-23 have been amended. Claims 1-5, and 21-23 are pending.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1-2, 4, and 21-23, are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

As per claim 1, it is unclear as to what device will be determined there is functional impairment, because in the same claim, in one place, applicant claim determine the signal transmission link is functioning properly (line 10); other place, determine whether there is a functional impairment in the torque transmission device or the actuation device or the electronic transmission control unit (lines 14-16); and another place, determine when the electronic engine control unit a functional impairment (line 19). It is unclear, as to determine which one is functional impairment. Clarification is required.

Also, in claim 1, lines 7-9, “where the electronic engine control unit (132) has a signal output upon which adjoins a signal transmission link **and where the electronic engine control unit (132) via the signal output and the signal transmission link**”, it is unclear as to what is that means “**where the electronic engine control unit (132) via the signal output and the**

signal transmission link”, and not understand what applicant want to claim here. Clarification or explanation is required.

Also, in claim 1, lines 17-19, the phrase “and limiting, **using the electronic engine control unit (132)**, the maximum permissible engine torque of the combustion engine **when the electronic engine control unit (132) has determined a functional impairment**”, it is not make sense as to, how can ones using the electronic engine control unit, limiting the maximum permissible engine torque of the combustion engine **when the electronic engine control unit has determined a functional impairment**. It is obvious to one of ordinary skill in the art that when a control unit is functioning impairment, it is not functional properly, therefore, it cannot be used to limit the maximum permissible engine torque. Correction or clarification or explanation is required.

Claim 1, recites the limitations “the actuation device”, in line 16, and “the maximum permissible engine torque”, in line 18. There are insufficient antecedent basis for these limitations in the claim.

Claim 2, recites the limitations “the actuation device”, in line 12, and “the maximum permissible engine torque”, in line 17. There are insufficient antecedent basis for these limitations in the claim.

Claims 21-22, are depended on claim 1, included all the limitations as above.

As per claim 23, line 2, recites the limitations “the driving end”, in line 2. There is insufficient antecedent basis for this limitation in the claim. Also, it is unclear as to what is “the driving end”.

Also, in claim 23, recites the limitations “the power output side”, in line 3; “the gear ratio”, in line 7; “the idle speed”, in line 17; “the engine output”, and “the selectable gear ratios” in line 18. There are insufficient antecedent basis for these limitations in the claim.

In claim 23, in lines 18-19, the limitation “where the engine output as well as the selectable gear ratios of the drivetrain (122) and where the idle controller functions”, it is unclear as to what this means in the claim, and how is this limitation is related to the phrase right before that limitation.

Also, claim 23, lines 20-21, the limitation, “the engine torque could be **raised to a value that is such that in case of this the selectable gear ratio**”, it is unclear as to what applicant want to claim in this limitation.

Clarification of all of the above is required for further consideration of the current claimed invention.

Claim Rejections - 35 USC § 102

3. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

4. Claims 3, and 5, are rejected under 35 U.S.C. 102(b) as being anticipated by Yamaguchi (5216938).

As per claim 3, Yamaguchi discloses a method for controlling a motor vehicle drivetrain system, which motor vehicle drivetrain system has a gearbox device (102, 106) arranged in a

drivetrain (122) or at least one torque transmission device (114) arranged in drivetrain (122) where the motor vehicle drivetrain system has a combustion engine (124) for the purpose of driving the drivetrain (122) as well as an electronic engine control unit (132) that controls the combustion engine (124) and an electronic transmission control unit (110) for the purpose of controlling the gearbox device (102, 106) or at least one torque transmission device (114), comprising: determining whether between the electronic transmission control unit (110) and the electronic engine control unit (132) there is a data or signal communication or whether the electronic transmission control unit (110) is functionally impaired or whether the gearbox device or the torque transmission device (114) is functionally impaired (see columns 9-11, lines 65-17); ascertaining a speed of the vehicle (100), a status of a brake (140) of the motor vehicle (100), torque for the idle controller, or a position for a selection lever that can be actuated by a driver of the vehicle; and, turning off the combustion engine (124) when it is determined that there is no data or signal communication or that there is a functionally impaired data or signal communication between the electronic transmission control unit (110) and the electronic engine control unit (132) or the electronic transmission control unit (110) is functionally impaired, or there is a functional impairment in the gearbox device (102, 106) or in the torque transmission device (114) and when it is ascertained that the brake (140) of motor vehicle (100) is actuated, or the vehicle speed is less than a predetermined speed limit or the engine speed is less than a predetermined boundary, or the idle controller torque is greater than a predetermined boundary value, or the selection lever is neither in the park position nor in the neutral position (see columns 11-13, lines 19-47; and columns 16-17, lines 6-52).

As per claim 5, Yamaguchi discloses determining by means of the electronic engine control unit (132) whether there is a data or signal communication or a functioning data or signal communication between the electronic transmission control unit (110) and the electronic engine control unit (132) or whether the electronic transmission control unit (110) is functionally impaired or whether the gearbox device (102,106) or the torque transmission device (114) are functionally impaired; or limiting the maximum permissible engine torque by means of the electronic engine control unit (132); or turning off the combustion engine (124) by means of the electronic engine control unit (see columns 11-13, lines 19-47; and columns 16-17, lines 6-52).

5. Claims 2, and 4 will be allow if correct the rejection under 35 U.S.C. 112, second paragraph above.

Remarks

6. Applicant's argument filed on 11/19/08 has been fully considered. Upon updated search, the new ground of rejection as above, as the result of the new claims amended.

Yamaguchi still reads claims 3 and 5 as above, because claim 3 determine whether there is data or signal communication or there is a functioning data or signal communication functionally impaired (claim 3, lines 9-10). Yamaguchi does disclose whether a communication line between an engine control computer and a transmission control computer becomes out of order occurs (see at least the abstract, lines 16-18).

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dalena Tran whose telephone number is 571-272-6968. The examiner can normally be reached on M-W (in a first week of a bi-week), and T-R (in a second week of bi-week) from 7:00AM-6:00PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Khoi H. Tran can be reached on 571-272-6919. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/Dalena Tran/
Primary Examiner, Art Unit 3664
February 9, 2009